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Attorneys for Defendants  
ALEX CAINE and the CITY OF SAN PABLO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

,  
CHRISTIAN J. BRACKO,  
Plaintiff,  
vs.  
ALEX CAINE; CITY OF SAN PABLO;  
and DOES 1-10, inclusive,  
Defendants.

Case No. C08-00239 JL

**DECLARATION OF NOAH G.  
BLECHMAN IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS  
PLAINTIFF'S STATE LAW CAUSES OF  
ACTION**

Date: July 2, 2008  
Time: 9:30 a.m.  
Dept.: Courtroom F, 15<sup>th</sup> Floor  
Judge: Hon. James Larson

I, Noah G. Blechman, Esq., hereby declare:

1. I am an attorney at law duly licensed to practice before the courts of the State of California and this Court and am a partner at the law firm of McNamara, Dodge, Ney, Beatty, Slattery, Pfalzer, Borges & Brothers LLP; attorneys of record for Defendants ALEX CAINE and the CITY OF SAN PABLO. I have personal knowledge of each matter stated herein.
2. Attached hereto as **Exhibit "A"** is a true and correct copy of Plaintiff's Government Tort Claim to the City of San Pablo, received September 21, 2007.
3. Attached hereto as **Exhibit "B"** is a true and correct copy of a letter from Bradley Ward, Finance Director for the City of San Pablo's Office of the City Manager,

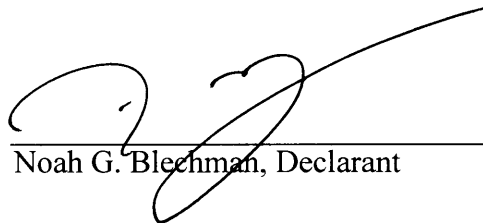
McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP  
ATTORNEYS AT LAW  
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TELEPHONE: (925) 939-5330

returning as late Plaintiff's claim, dated October 19, 2007.

4. Attached hereto as **Exhibit "C"** is a true and correct copy of a letter from Plaintiff's counsel, Mister Phillips, Esq., to the City of San Pablo applying for leave to present a claim received November 26, 2007.
5. Attached hereto as **Exhibit "D"** is a true and correct copy of the City of San Pablo's Notice of Denial of Leave to File a Late Claim, dated December 14, 2007.
6. Attached hereto as **Exhibit "E"** is a true and correct copy of Plaintiff's Complaint for Damages, filed January 14, 2007.
7. Attached hereto as **Exhibit "F"** is a true and correct copy of Plaintiff's First Amended Complaint for Damages, filed February 11, 2008.
8. Attached hereto as **Exhibit "G"** is a true and correct copy of Plaintiff's Second Amended Complaint for Damages, filed March 30, 2008.

I declare under penalty and perjury the foregoing is true and correct.

Executed this 15<sup>th</sup> day of May, 2008 at Walnut Creek, California.

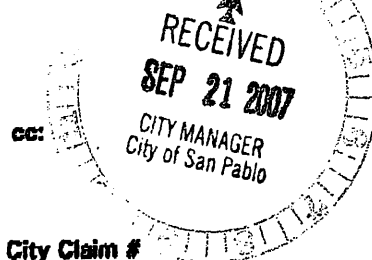
By:   
Noah G. Blechman, Declarant

## EXHIBIT A

# CLAIM PRESENTED TO THE CITY OF SAN PABLO

\*Please read the instructions on the back before completing.

Reserve for Filing Stamp



1. Claimant's Name: (PLEASE PRINT)

CHRISTIAN BRACKO

Claimant's Address:

822 CARPIND AVE

City, State, Zip:

PITTSBURGH, CA 94565

Day Phone: ( )

N/A

Eve Phone: ( )

N/A

City Claim #

2. When did the damage or injury occur?

Month: 11

Day: 27

Year: 06

Time: 12

a.m.

(p.m.)

3. At which location did the damage or injury occur?

PARCHESTER VILLAGE

Police Report #

?

4. What happened and why is the City responsible?

a. POLICE OFFICER CAINE USED EXCESSIVE FORCE ON ~~ME~~ CHRISTIAN BRACKO, BASED ON INFORMATION AND BELIEF.

Name and position of responsible City Employee(s), if known:

b. POLICE OFFICER CAINE

5. What damage or injury occurred?

HEAD, FACE, DENTAL, NECK INJURIES, ETC.

6. Claim amount (only if less than \$10,000):

If the amount exceeds \$10,000, please check (X) the court of appropriate jurisdiction:

Municipal Court (claims up to \$25,000)

X

Superior Court (claims over \$25,000)

7. How did you arrive at the amount claimed? Please attach documentation.

THE TIME TO FILE THIS CLAIM WAS TOLLED DUE TO A PENDING CRIMINAL CASE. THE CASE IS NOW OVER.

8. I declare under penalty of perjury under the laws of the State of California that the following information is true and correct, and that this declaration was executed on

at SAN PABLO

CA.

SEPTEMBER 20 2007

Signature of Claimant or Representative's Signature

9. Official Notices and Correspondence

If represented by an insurance company or an attorney, please provide the information requested below.

Name and Capacity: (PLEASE PRINT)

MISTER PHILLIPS, ATTORNEY

Address:

P.O. BOX 1162

City, State, Zip:

PINOLE, CA 94564

Daytime Telephone: ( )

510-672-3756

Evening Phone: ( )

N/A

## EXHIBIT B



Office of the City Manager

# CITY OF SAN PABLO

One Alvarado Square  
13831 San Pablo Avenue  
San Pablo, CA 94806  
[www.ci.san-pablo.ca.us](http://www.ci.san-pablo.ca.us)

Phone 510.215.3000 • Fax 510.620.0204

October 19, 2007

Mister Phillips, Attorney  
P.O. Box 1162  
Pinole, CA 94564

Dear Mister Phillips:

The claim you presented to the City of San Pablo on September 21, 2007, is being returned because it was not presented within 6 months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

Your only recourse at this time is to apply without delay to the City of San Pablo for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley Ward", is written over a horizontal line.

Bradley Ward  
Finance Director

Cc: City Clerk  
Melene Maxfield, Municipal Pooling Authority  
Commander Foisie

## EXHIBIT C

RECEIVED  
NOV 26 2007  
CITY CLERK  
City of San Pablo

November 25, 2007

City of San Pablo  
One Alvarado Sq  
13831 San Pablo Ave  
San Pablo, CA 94806

Re: Claimant Christian Bracko

To Whom It May Concern:

Christian Bracko does hereby apply for leave to present the attached excessive force claim originally presented to the City on September 21, 2007 on the ground of excusable neglect.

The reason for the delay in presenting the claim is that I advised Mr. Bracko not to present the claim until the related criminal proceedings against him concluded out of concern that the police officer who allegedly used excessive force on him would have him charged with battery against a peace officer to cover up the use of excessive force. In my experience, police officers who use excessive force on suspects have them charged thus. I did not want the police officer to do this to Mr. Bracko. Battery against a peace officer is a very serious crime punishable by a \$2,000.00 fine and one year in county jail.

Incidentally, denying this application will not stop Mr. Bracko from suing the City or the police officer in federal court. Hopefully, filing a federal lawsuit will not be necessary. Mr. Bracko would like to settle all of his claims against the City and the police officer.

Cordially,

  
Mister Phillips, Esq.



## EXHIBIT D

# NOTICE OF DENIAL OF LEAVT TO FILE LATE CLAIM

DATE OF NOTICE: 12/14/07

REDACT

FROM: City of San Pablo

TO: Mister Phillips, Attorney

<u>P.O. Box 1162</u>		
<i>Number</i>	<i>Street</i>	
<u>Pinole</u>	<u>CA</u>	<u>94564</u>
<i>City</i>	<i>State</i>	<i>Zip Code</i>

NAME OF CLAIMANT (if different from above): Christian Bracko

DATE CLAIM WAS PRESENTED: September 21, 2007

## PLEASE TAKE NOTICE

The Application for Leave to File a Late Claim that you presented to the City of San Pablo on November 26, 2007, was denied on December 13, 2007.

## WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code § 945.4 (the claims-presentation requirement). See Government Code § 946.6. Your petition must be filed with the court within six (6) months from the date, set forth above, on which your Application for Leave to Present a Late Claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Signature: Karalee Vroom

Name and Title: Karalee Vroom, Administrative Secretary

Cc: Melene Maxfield, MPA ✓  
Commander Foisie

## EXHIBIT E

1 MISTER PHILLIPS, SBN 228991  
 2 LAW OFFICE OF MISTER PHILLIPS  
 3 P.O. Box 1162  
 4 Pinole, CA 94564  
 5 Phone: (510) 672-3756  
 6 Fax: (510) 222-4198  
 7 mister\_phillips@hotmail.com

8 Attorney for Plaintiff Christian J. Bracko

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 OAKLAND DIVISION

12 C08-00239 JL

13 CHRISTIAN J. BRACKO,  
 14 Plaintiff,

15 vs.

16 ALEX CAINE; CITY OF SAN PABLO,  
 17 CA; and DOES 1-10, inclusive,  
 18 Defendants.

) Case No.:  
 )  
 ) COMPLAINT: POLICE  
 ) EXCESSIVE/DEADLY FORCE  
 )  
 ) DEMAND FOR JURY TRIAL

19 JURISDICTION

20 1. The Court has original jurisdiction under 28 U.S.C.  
 21 Section 1331, because the civil action arises under 42 U.S.C.  
 22 Section 1983. The Court has supplemental jurisdiction under 28  
 23 U.S.C. Section 1367, because it has original jurisdiction.

24 VENUE

25 2. Venue is proper under 28 U.S.C. Section 1391(b), because  
 26 a substantial part of the events or omissions giving rise to the  
 27 claim occurred in the district.  
 28

FILED  
 NP 2008 JAN 14 PM 3:30  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 E-filing  
 JFP  
 ADR

**INTRADISTRICT ASSIGNMENT**

3. This action should be assigned to the Oakland Division, because a substantial part of the events or omissions giving rise to the claim occurred in the adjoining county of Contra Costa.

**PARTIES**

4. Plaintiff Christian J. Bracko is a black male.

5. Defendant Alex Caine is a white male. At all times relevant to this complaint, Mr. Caine was a police officer acting under the color of state law and within the scope of his employment. Mr. Bracko sues Mr. Caine individually and in his official capacity.

6. At all times relevant to this complaint, Defendant City of San Pablo, CA (the City) employed Mr. Caine.

7. Mr. Bracko is ignorant of the true names and capacities of Defendants Does 1-10, inclusive, and therefore sues them by such fictitious names. Mr. Bracko is informed and believes that Does 1-10, inclusive, are responsible in some manner for the damages he suffered as set forth herein. Mr. Bracko will amend this complaint to state the true names and capacities of Does 1-10, inclusive, when he ascertains them.

**FACTS**

8. On November 27, 2006, around noon, an unknown San Pablo, CA police officer tried to pull Mr. Bracko over in Parchester Village, a predominately black neighborhood in Richmond, CA. Mr. Bracko fled by car and then on foot in the same neighborhood.

9. The officer caught Mr. Bracko, wrestled him down onto his stomach, and handcuffed his hands behind his back. Mr.

1 Bracko's head was on the sidewalk. His body was in the street.

2 Mr. Bracko was under full control.

3 10. A few minutes later, another San Pablo police officer,  
4 whom Mr. Bracko is informed and believes is Alex Caine, ran from  
5 around the corner, jumped into the air, and crashed down onto  
6 Mr. Bracko's head with his knee for no apparent reason.

7 11. Mr. Bracko lost consciousness. He could have lost his  
8 life. Due to the awkward position Mr. Bracko's head and body  
9 were in, Mr. Caine could have easily broken Mr. Bracko's neck.

10 12. Mr. Caine pulled Mr. Bracko to his feet. Mr. Bracko  
11 could not walk without assistance. On their way to the police  
12 car, Mr. Caine dropped Mr. Bracko into the gutter like a piece  
13 of trash.

14 13. As a result of Mr. Caine's conduct, Mr. Bracko suffered  
15 physical injuries, loss of consciousness, mental anguish, and  
16 severe and serious emotional distress. Mr. Bracko also incurred  
17 hospital bills.

18 14. The San Pablo Police Department has a policy, custom,  
19 pattern, and/or practice of using excessive and/or deadly force  
20 on people of color. The officers may assault, batter, and  
21 sometimes even kill people of color without being seriously  
22 reprimanded or disciplined by the department's command staff,  
23 including Chief of Police Joseph P. Aita.

24 15. Mr. Caine violated Mr. Bracko's rights because of his  
25 race and/or color. Mr. Caine was executing the department's  
26 policy, custom, practice, and/or pattern of using excessive  
27 and/or deadly force on people of color when he violated Mr.  
28 Bracko's rights.

**FIRST CAUSE OF ACTION****(42 U.S.C. § 1983 AGAINST ALL DEFENDANTS)**

16. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 15 of this complaint herein by reference. Mr. Caine violated Mr. Bracko's Fourth Amendment right to be free from unreasonable seizure by using excessive and/or deadly force on him. Mr. Caine was executing the department's policy, custom, practice, and/or pattern of using excessive and/or deadly force on people of color when he violated Mr. Bracko's rights.

**SECOND CAUSE OF ACTION****(ASSAULT AGAINST MR. CAINE)**

17. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 16 of this complaint herein by reference. Mr. Caine assaulted Mr. Bracko.

**THIRD CAUSE OF ACTION****(BATTERY AGAINST MR. CAINE)**

18. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 17 of this complaint herein by reference. Mr. Caine committed battery on Mr. Bracko.

**FOURTH CAUSE OF ACTION****(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST MR. CAINE)**

19. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 18 of this complaint herein by reference. Mr. Caine's conduct caused Mr. Bracko to suffer severe emotional distress.

**FIFTH CAUSE OF ACTION****(NEGLIGENCE AGAINST MR. CAINE)**

20. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 19 of this complaint herein by reference. Mr. Bracko was harmed by Mr. Caine's negligence.

**SIXTH CAUSE OF ACTION****(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST MR. CAINE)**

21. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 20 of this complaint herein by reference. Mr. Caine's conduct caused Mr. Bracko to suffer serious emotional distress.

**SEVENTH CAUSE OF ACTION****(CA CIV. CODE § 51.7(a) AGAINST ALL DEFENDANTS)**

22. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 21 of this complaint herein by reference. Under CA Civil Code Section 51.7(a), "All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property ... on account of [race or color]." Mr. Caine denied Mr. Bracko his rights under Section 51.7(a). The City aided, incited, or conspired in that denial through the department's policy, custom, practice, and/or pattern of using excessive and/or deadly force on people of color.

**EIGHTH CAUSE OF ACTION****(CIV. CODE § 52.3(a) AGAINST ALL DEFENDANTS)**

23. Mr. Bracko incorporates the allegations set forth in paragraphs 1 through 22 of this complaint herein by reference.



1 Under Civil Code Section 52.3(a), "No governmental authority, or  
2 agent of a governmental authority, or person acting on behalf of  
3 a governmental authority, shall engage in a pattern or practice  
4 of conduct by law enforcement officers that deprives any person  
5 of rights, privileges, or immunities secured or protected by the  
6 Constitution or laws of the United States or by the Constitution  
7 or laws of California." Defendants engaged in a pattern or  
8 practice of conduct that deprived Mr. Bracko of his rights under  
9 the Constitutions or laws of the U.S. and CA.

10 **NINTH CAUSE OF ACTION**

11 **(CA GOV. CODE § 820(a) AGAINST MR. CAINE)**

12 24. Mr. Bracko incorporates the allegations set forth in  
13 paragraphs 1 through 23 of this complaint herein by reference.  
14 Under CA Government Code Section 820(a), "Except as otherwise  
15 provided by statute (including Section 820.2), a public employee  
16 is liable for injury caused by his act or omission to the same  
17 extent as a private person." Therefore, Mr. Caine is liable for  
18 the injuries his acts or omissions caused Mr. Bracko.

19 **TENTH CAUSE OF ACTION**

20 **(CA GOV. CODE § 815.2(a) AGAINST THE CITY)**

21 25. Mr. Bracko incorporates the allegations set forth in  
22 paragraphs 1 through 24 of this complaint herein by reference.  
23 Under Government Code Section 815.2(a), "A public entity is  
24 liable for injury proximately caused by an act or omission of an  
25 employee of the public entity within the scope of his employment  
26 if the act or omission would, apart from this section, have  
27 given rise to a cause of action against that employee or his  
28

1 personal representative." Therefore, the City is liable for the  
2 injuries Mr. Caine's acts or omissions caused Mr. Bracko.

3 **PRAYER FOR RELIEF**

4 26. Mr. Bracko incorporates the allegations set forth in  
5 paragraphs 1 through 25 of this complaint herein by reference.  
6 Mr. Bracko prays for the following relief jointly and severally  
7 against all Defendants.


- 8 1. Compensatory damages according to proof;  
9 2. Additional civil penalties of \$25,000.00 per defendant  
10 pursuant to Civil Code Section 52(b) (2);  
11 3. Punitive damages according to proof;  
12 4. Injunctive relief;  
13 5. Attorney's fees;  
14 6. Costs; and  
15 7. Any other relief the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Mr. Bracko does hereby request a jury trial.

18 Dated January 8, 2008

Respectfully Submitted,

19   
20 \_\_\_\_\_  
21 Mister Phillips  
22 Attorney for Plaintiff  
23 Christian J. Bracko  
24  
25  
26  
27  
28

## EXHIBIT F

MISTER PHILLIPS, SBN 228991  
**LAW OFFICE OF MISTER PHILLIPS**  
P.O. Box 1162  
Pinole, CA 94564  
Phone: (510) 672-3756  
Fax: (510) 222-4198  
mister\_phillips@hotmail.com

Attorney for Plaintiff Christian J. Bracko

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

CHRISTIAN J. BRACKO,	)	Case No.: 3:08-cv-00239-JL
	)	
Plaintiff,	)	<b>FIRST AMENDED COMPLAINT: POLICE</b>
	)	<b>EXCESSIVE/DEADLY FORCE</b>
vs.	)	
	)	DEMAND FOR JURY TRIAL
ALEX CAINE; CITY OF SAN PABLO,	)	
	)	
CA; and DOES 1-10, inclusive,	)	
	)	
Defendants.	)	

**JURISDICTION**

1. The Court has original jurisdiction under 28 U.S.C. Section 1331, because the civil action arises under 42 U.S.C. Section 1983. The Court has supplemental jurisdiction under 28 U.S.C. Section 1367, because it has original jurisdiction.

**VENUE**

2. Venue is proper under 28 U.S.C. Section 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in the district.

**INTRADISTRICT ASSIGNMENT**

3. This action should be assigned to the Oakland Division, because a substantial part of the events or omissions giving rise to the claim occurred in the adjoining county of Contra Costa.

**PARTIES**

4. At all times relevant to this complaint, Plaintiff Christian J. Bracko was a black male.

5. At all times relevant to this complaint, Defendant City of San Pablo (the City) was a municipal corporation in the State of California.

6. At all times relevant to this complaint, Defendant Alex Caine was a white police officer for the City acting under the color of state law and within the scope of his employment. Mr. Bracko sues Mr. Caine individually and in his official capacity.

7. Mr. Bracko is ignorant of the true names and capacities of Defendants Does 1-10, inclusive, and therefore sues them by such fictitious names. Mr. Bracko is informed and believes that Does 1-10, inclusive, are responsible in some manner for the damages he suffered as set forth herein. Mr. Bracko will amend this complaint to state the true names and capacities of Does 1-10, inclusive, when he ascertains them.

**FACTS**

8. On or around November 27, 2006, around noon, an unknown police officer for the City tried to pull Mr. Bracko over in Parchester Village, a predominately black neighborhood in Richmond, CA. Mr. Bracko fled by car and then on foot in the same neighborhood.

1 9. The officer caught Mr. Bracko, wrestled him down onto  
2 his stomach, and handcuffed his hands behind his back. Mr.  
3 Bracko's head was on the sidewalk. His body was in the street.  
4 The officer had Mr. Bracko under full control.

5 10. A few minutes later, another police officer for the  
6 City, whom Mr. Bracko is informed and believes is Alex Caine,  
7 ran from around the corner, jumped into the air, and crashed  
8 down onto Mr. Bracko's head with his knee.

9 11. Mr. Bracko lost consciousness. He could have lost his  
10 life. Due to the awkward position Mr. Bracko's head and body  
11 were in, Mr. Caine could have easily broken Mr. Bracko's neck.

12 12. Mr. Caine pulled Mr. Bracko to his feet. Mr. Bracko  
13 could not walk without assistance. On their way to the police  
14 car, Mr. Caine dropped Mr. Bracko into the gutter like a piece  
15 of trash.

16 13. Mr. Caine kneed Mr. Bracko in his head and dropped him  
17 into the gutter because of his race and/or color. Mr. Caine  
18 failed to use ordinary and/or reasonable care and/or skill to  
19 protect Mr. Bracko from harm. Mr. Caine acted with oppression  
20 and malice.

21 14. Mr. Bracko is informed and believes that the San Pablo  
22 Police Department (SPPD) has a policy, custom, pattern, and/or  
23 practice of using excessive and/or deadly force on people of  
24 color. Mr. Caine was executing the SPPD's policy, custom,  
25 practice, and/or pattern of using excessive and/or deadly force  
26 on people of color when he kneed Mr. Bracko in his head and  
27 dropped him into the gutter.  
28

1           15. As a result of the defendants' conduct, Mr. Bracko  
2 suffered physical injuries, loss of consciousness, mental  
3 anguish, and severe and/or serious emotional distress. Mr.  
4 Bracko also incurred hospital bills.

5                           **FIRST CLAIM UNDER 42 U.S.C. § 1983**

6                                   **(AGAINST ALL DEFENDANTS)**

7           16. Mr. Bracko incorporates by reference each and every  
8 allegation contained in paragraphs 1 through 15 of this  
9 complaint as though fully set forth herein. Mr. Caine violated  
10 Mr. Bracko's Fourth Amendment right to be free from unreasonable  
11 seizure by using excessive and/or deadly force on him. Mr. Caine  
12 was executing the SPPD's policy, custom, practice, and/or  
13 pattern of using excessive and/or deadly force on people of  
14 color when he violated Mr. Bracko's rights.

15                           **SECOND CLAIM FOR ASSAULT**

16                                   **(AGAINST MR. CAINE)**

17           17. Mr. Bracko incorporates by reference each and every  
18 allegation contained in paragraphs 1 through 16 of this  
19 complaint as though fully set forth herein. Mr. Caine assaulted  
20 Mr. Bracko.

21                           **THIRD CLAIM FOR BATTERY**

22                                   **(AGAINST MR. CAINE)**

23           18. Mr. Bracko incorporates by reference each and every  
24 allegation contained in paragraphs 1 through 17 of this  
25 complaint as though fully set forth herein. Mr. Caine committed  
26 battery on Mr. Bracko.

**FOURTH CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**(AGAINST MR. CAINE)**

19. Mr. Bracko incorporates by reference each and every allegation contained in paragraphs 1 through 18 of this complaint as though fully set forth herein. Mr. Caine's conduct caused Mr. Bracko to suffer severe emotional distress.

**FIFTH CLAIM FOR NEGLIGENCE**  
**(AGAINST MR. CAINE)**

20. Mr. Bracko incorporates by reference each and every allegation contained in paragraphs 1 through 19 of this complaint as though fully set forth herein. Mr. Bracko was harmed by Mr. Caine's negligence.

**SIXTH CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**(AGAINST MR. CAINE)**

21. Mr. Bracko incorporates by reference each and every allegation contained in paragraphs 1 through 20 of this complaint as though fully set forth herein. Mr. Caine's conduct caused Mr. Bracko to suffer serious emotional distress.

**SEVENTH CLAIM FOR VIOLATION OF CA CIV. CODE § 51.7(a)**  
**(AGAINST ALL DEFENDANTS)**

22. Mr. Bracko incorporates by reference each and every allegation contained in paragraphs 1 through 21 of this complaint as though fully set forth herein. Under CA Civil Code Section 51.7(a), "All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property ... on account of [race or color]." Mr. Caine denied Mr. Bracko his rights under Section 51.7(a). The City



1 aided, incited, and/or conspired in that denial through the  
2 SPPD's policy, custom, practice, and/or pattern of using  
3 excessive and/or deadly force on people of color.

4 **EIGHTH CLAIM FOR VIOLATION OF CIV. CODE § 52.3(a)**

5 **(AGAINST ALL DEFENDANTS)**

6 23. Mr. Bracko incorporates by reference each and every  
7 allegation contained in paragraphs 1 through 22 of this  
8 complaint as though fully set forth herein. Under Civil Code  
9 Section 52.3(a), "No governmental authority, or agent of a  
10 governmental authority, or person acting on behalf of a  
11 governmental authority, shall engage in a pattern or practice of  
12 conduct by law enforcement officers that deprives any person of  
13 rights, privileges, or immunities secured or protected by the  
14 Constitution or laws of the United States or by the Constitution  
15 or laws of California." Defendants engaged in a pattern or  
16 practice of conduct that deprived Mr. Bracko of his rights under  
17 the Constitutions or laws of the U.S. and/or CA.

18 **NINTH CLAIM UNDER CA GOV. CODE § 820(a)**

19 **(AGAINST MR. CAINE)**

20 24. Mr. Bracko incorporates by reference each and every  
21 allegation contained in paragraphs 1 through 23 of this  
22 complaint as though fully set forth herein. Under CA Government  
23 Code Section 820(a), "Except as otherwise provided by statute  
24 (including Section 820.2), a public employee is liable for  
25 injury caused by his act or omission to the same extent as a  
26 private person." Therefore, Mr. Caine is liable for the injuries  
27 his acts or omissions caused Mr. Bracko.  
28

**TENTH CLAIM UNDER GOV. CODE § 815.2(a)**  
**(AGAINST THE CITY)**

25. Mr. Bracko incorporates by reference each and every allegation contained in paragraphs 1 through 24 of this complaint as though fully set forth herein. Under Government Code Section 815.2(a), "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." Therefore, the City is liable for the injuries Mr. Caine's acts or omissions caused Mr. Bracko.

**ELEVENTH CLAIM UNDER GOV. CODE § 52.1(b)**  
**(AGAINST ALL DEFENDANTS)**

26. Mr. Bracko incorporates by reference each and every allegation contained in paragraphs 1 through 25 of this complaint as though fully set forth herein. Under Civil Code Section 52.1(b), "Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured." The defendants have interfered with or

1 attempted to interfere with Mr. Bracko's exercise and/or  
2 enjoyment of his rights.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Mr. Bracko demands judgment against the  
5 defendants jointly and severally as follows:

- 6 1. General damages according to proof;
- 7 2. Actual damages according to proof;
- 8 3. Special damages, including medical expenses, according to  
9 proof;
- 10 4. Punitive damages according to proof;
- 11 5. A civil penalty of \$25,000 for each and every violation of  
12 Civil Code Sections 51.7 and 52.1(b) pursuant to Section  
13 52(b)(2);
- 14 6. Injunctive relief;
- 15 7. Attorney's fees;
- 16 8. Costs of suit; and
- 17 9. For such other relief as the Court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Mr. Bracko does hereby demand a jury trial.

20 Dated February 3, 2008

Respectfully Submitted,

21 /s/ Mister Phillips  
22 Mister Phillips  
23 Attorney for Plaintiff  
24 Christian J. Bracko  
25  
26  
27  
28

## EXHIBIT G

MISTER PHILLIPS, SBN 228991  
**LAW OFFICE OF MISTER PHILLIPS**  
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Pinole, CA 94564  
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Attorney for Plaintiff Christian J. Bracko

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

CHRISTIAN J. BRACKO,	)	Case No.: 3:08-cv-00239-JL
	)	
Plaintiff,	)	<b>SECOND AMENDED COMPLAINT:</b>
	)	<b>EXCESSIVE FORCE</b>
vs.	)	
	)	DEMAND FOR JURY TRIAL
ALEX CAINE; CITY OF SAN PABLO,	)	
	)	
CA; and DOES 1-10, inclusive,	)	
	)	
Defendants.	)	

**JURISDICTION**

1. The Court has original jurisdiction under 28 U.S.C. Section 1331, because the civil action arises under 42 U.S.C. Section 1983. The Court has supplemental jurisdiction under 28 U.S.C. Section 1367, because it has original jurisdiction.

**VENUE**

2. Venue is proper under 28 U.S.C. Section 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in the district.

**INTRADISTRICT ASSIGNMENT**

3. This action should be assigned to the Oakland Division, because a substantial part of the events or omissions giving rise to the claim occurred in the adjoining county of Contra Costa.

**PARTIES**

4. At all times relevant to this complaint, Plaintiff Christian J. Bracko was a black male.

5. At all times relevant to this complaint, Defendant City of San Pablo (the City) was a municipal corporation in the State of California.

6. At all times relevant to this complaint, Defendant Alex Caine was a white police officer for the City acting under the color of law. Mr. Bracko now sues Mr. Caine in his individual capacity only.

7. Mr. Bracko is ignorant of the true names and capacities of Defendants Does 1-10, inclusive, and therefore sues them by such fictitious names. Mr. Bracko is informed and believes that Does 1-10, inclusive, are responsible in some manner for the damages he suffered as set forth herein. Mr. Bracko will amend this complaint to state the true names and capacities of Does 1-10, inclusive, when he ascertains them.

**FACTS**

8. On or around November 27, 2006, around noon, an unknown police officer for the City tried to pull Mr. Bracko over in Parchester Village, a predominately black neighborhood in Richmond, CA. Mr. Bracko fled by car and then on foot in the same neighborhood.

1           9. The officer caught Mr. Bracko, wrestled him onto his  
2 stomach, and handcuffed his hands behind his back. Mr. Bracko  
3 laid there peaceably with his head on the sidewalk and his body  
4 on the street. The officer had Mr. Bracko under full control.

5           10. A few minutes later, another police officer for the  
6 City, whom Mr. Bracko is informed and believes is Alex Caine,  
7 ran from around the corner, jumped into the air, and crashed  
8 down onto Mr. Bracko's head with his knee.

9           11. Mr. Bracko lost consciousness. He could have lost his  
10 life. Due to the awkward position Mr. Bracko's head and body  
11 were in, Mr. Caine could have easily broken Mr. Bracko's neck.

12           12. Mr. Caine pulled Mr. Bracko to his feet. Mr. Bracko  
13 could not walk without assistance. On their way to the police  
14 car, Mr. Caine dropped Mr. Bracko into the gutter like a piece  
15 of trash.

16           13. Mr. Caine failed to use reasonable care to protect Mr.  
17 Bracko from harm. Mr. Caine's actions were intentional. Mr.  
18 Caine kneed Mr. Bracko in his head and dropped him into the  
19 gutter because of his race and/or color. Mr. Caine acted with  
20 oppression and/or malice.

21           14. Mr. Bracko is informed and believes that the San Pablo  
22 Police Department (SPPD) has an official policy or longstanding  
23 pattern, practice, or custom of using excessive force on people  
24 of color. Mr. Caine was executing the SPPD's policy, pattern,  
25 practice, or custom when he kneed Mr. Bracko in his head and  
26 dropped him into the gutter.

27           15. As a result of the defendants' conduct, Mr. Bracko  
28 suffered physical injuries, loss of consciousness, mental

1 anguish, and serious and/or severe emotional distress. Mr.  
2 Bracko also incurred medical expenses.

3 **FIRST CLAIM UNDER 42 U.S.C. § 1983**

4 **(AGAINST ALL DEFENDANTS)**

5 16. Mr. Bracko incorporates by reference each and every  
6 allegation contained in paragraphs 1 through 15 of this  
7 complaint as though fully set forth herein. Mr. Caine violated  
8 Mr. Bracko's Fourth Amendment right to be free from unreasonable  
9 seizure by using excessive force on him. Mr. Caine was executing  
10 the SPPD's policy, pattern, practice, or custom of using  
11 excessive force on people of color when he violated Mr. Bracko's  
12 rights.

13 **SECOND CLAIM FOR ASSAULT**

14 **(AGAINST MR. CAINE)**

15 17. Mr. Bracko incorporates by reference each and every  
16 allegation contained in paragraphs 1 through 16 of this  
17 complaint as though fully set forth herein. Mr. Caine assaulted  
18 Mr. Bracko.

19 **THIRD CLAIM FOR BATTERY**

20 **(AGAINST MR. CAINE)**

21 18. Mr. Bracko incorporates by reference each and every  
22 allegation contained in paragraphs 1 through 17 of this  
23 complaint as though fully set forth herein. Mr. Caine committed  
24 battery on Mr. Bracko.

25 **FOURTH CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

26 **(AGAINST MR. CAINE)**

27 19. Mr. Bracko incorporates by reference each and every  
28 allegation contained in paragraphs 1 through 18 of this



1 complaint as though fully set forth herein. Mr. Caine's conduct  
2 caused Mr. Bracko to suffer severe emotional distress.

3 **FIFTH CLAIM FOR NEGLIGENCE**

4 **(AGAINST MR. CAINE)**

5 20. Mr. Bracko incorporates by reference each and every  
6 allegation contained in paragraphs 1 through 19 of this  
7 complaint as though fully set forth herein. Mr. Bracko was  
8 harmed by Mr. Caine's negligence.

9 **SIXTH CLAIM FOR NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**

10 **(AGAINST MR. CAINE)**

11 21. Mr. Bracko incorporates by reference each and every  
12 allegation contained in paragraphs 1 through 20 of this  
13 complaint as though fully set forth herein. Mr. Caine's conduct  
14 caused Mr. Bracko to suffer serious emotional distress.

15 **SEVENTH CLAIM FOR VIOLATION OF CA CIV. CODE § 51.7(a)**

16 **(AGAINST MR. CAINE)**

17 22. Mr. Bracko incorporates by reference each and every  
18 allegation contained in paragraphs 1 through 21 of this  
19 complaint as though fully set forth herein. Under CA Civil Code  
20 Section 51.7(a), "All persons within the jurisdiction of this  
21 state have the right to be free from any violence, or  
22 intimidation by threat of violence, committed against their  
23 persons or property ... on account of [race or color]." Mr. Caine  
24 denied Mr. Bracko his rights under Section 51.7(a).

25 **EIGHTH CLAIM FOR VIOLATION OF CIV. CODE § 52.3(a)**

26 **(AGAINST MR. CAINE)**

27 23. Mr. Bracko incorporates by reference each and every  
28 allegation contained in paragraphs 1 through 22 of this

1 complaint as though fully set forth herein. Under Civil Code  
2 Section 52.3(a), "No governmental authority, or agent of a  
3 governmental authority, or person acting on behalf of a  
4 governmental authority, shall engage in a pattern or practice of  
5 conduct by law enforcement officers that deprives any person of  
6 rights, privileges, or immunities secured or protected by the  
7 Constitution or laws of the United States or by the Constitution  
8 or laws of California." Mr. Caine engaged in a pattern or  
9 practice of conduct that deprived Mr. Bracko of his rights under  
10 the Constitution or laws of the U.S. and/or CA.

11 **NINTH CLAIM UNDER CA GOV. CODE § 820(a)**

12 **(AGAINST MR. CAINE)**

13 24. Mr. Bracko incorporates by reference each and every  
14 allegation contained in paragraphs 1 through 23 of this  
15 complaint as though fully set forth herein. Under CA Government  
16 Code Section 820(a), "Except as otherwise provided by statute  
17 (including Section 820.2), a public employee is liable for  
18 injury caused by his act or omission to the same extent as a  
19 private person." Therefore, Mr. Caine is liable for the injuries  
20 his acts or omissions caused Mr. Bracko.

21 **TENTH CLAIM UNDER CIV. CODE § 52.1(b)**

22 **(AGAINST MR. CAINE)**

23 25. Mr. Bracko incorporates by reference each and every  
24 allegation contained in paragraphs 1 through 24 of this  
25 complaint as though fully set forth herein. Under Civil Code  
26 Section 52.1(b), "Any individual whose exercise or enjoyment of  
27 rights secured by the Constitution or laws of the United States,  
28 or of rights secured by the Constitution or laws of this state,

1 has been interfered with, or attempted to be interfered with, as  
2 described in subdivision (a), may institute and prosecute in his  
3 or her own name and on his or her own behalf a civil action for  
4 damages, including, but not limited to, damages under Section  
5 52, injunctive relief, and other appropriate equitable relief to  
6 protect the peaceable exercise or enjoyment of the right or  
7 rights secured." Mr. Caine has interfered with with Mr. Bracko's  
8 exercise or enjoyment of rights secured by the Constitution or  
9 laws of the U.S. and/or CA.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Mr. Bracko demands judgment against the  
12 defendants jointly and severally as follows:

- 13 1. Compensatory damages according to proof;
- 14 2. Punitive damages according to proof;
- 15 3. A civil penalty of \$25,000 for each and every violation of  
16 Civil Code Sections 51.7 and 52.1(b) pursuant to Section  
17 52(b)(2);
- 18 4. Injunctive relief;
- 19 5. Attorney's fees;
- 20 6. Costs of suit; and
- 21 7. For such other relief as the Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Mr. Bracko does hereby demand a jury trial.

24 Dated March 30, 2008

Respectfully Submitted,

25 /s/ Mister Phillips  
26 Mister Phillips  
27 Attorney for Plaintiff  
28 Christian J. Bracko